NO.: HHD-CV19-6119733 S	:	SUPERIOR COURT
VINCENT G. BENVENUTO	:	J. D. OF HARTFORD
VS.	:	AT HARTFORD
KEVIN BROOKMAN	:	NOVEMBER 13, 2020

MEMORANDUM OF DECISION RE MOTION TO STRIKE, # 103

Before the court is the plaintiff's motion to strike the defendant's special defenses in which the defendant alleges in this action for a bill of discovery (1) the defendant, as the operator of a blog, is not entitled to protection under General Statutes § 52-146t; and (2) that the defendant has not sufficiently alleged that he is entitled to protection under the Communications Decency Act of 1996, 47 U.S.C. § 230 et seq. (2018) or the first amendment of the United States constitution. For the following reasons the court grants the motion to strike both of the special defenses.

FACTS

The plaintiff, Vincent G. Benvenuto, filed a complaint for a pre-action bill of discovery petition on November 8, 2019, alleging the following facts. The plaintiff is a lieutenant in the Hartford Police Department (department). The defendant, Kevin Brookman, is the operator of a blog, titled "We The People"[1] (blog), that discusses recent events and controversies within the department and encourages commentary from members of the department regarding their employment. From August 15, 2019 through October 21, 2019, untrue and defamatory comments were anonymously posted to the blog about the plaintiff

[1] The court notes that the plaintiff in the complaint refers to the name of the blog as "We The People," whereas the defendant, in his answer, refers to the name of the blog as "We the People—Hartford." The parties appear to be referring to the same source, which will be referenced herein as the blog.

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and other department personnel. The comments included, inter alia, disparaging remarks about the plaintiff in an ongoing department investigation; an accusation that the plaintiff was sleeping while on shift; that the plaintiff inappropriately leaked department information; that the plaintiff is a racist and made racist comments toward another officer; that the plaintiff has threatened violence against the defendant; and, that an anonymous user impersonated the plaintiff and posted a comment on the blog. These anonymous comments on the blog violate a general order by the department, the Hartford Police Code of Conduct, and General Statutes § 53a-130.[2] The plaintiff has suffered injury to his personal and professional reputation as a result of the defamatory comments posted to the blog, requests the subscriber information to determine the source of the defamatory comments for any potential cause of action, and the defendant is the sole party in possession of that information. The plaintiff seeks in his prayer for relief that the defendant "release the internet protocol (IP) addresses and any other identifying information in his possession relating to anonymous users who have made comments" to the blog. Pl.'s Compl., Prayer for Relief, ¶ 1.

The defendant filed an answer and special defenses on December 3, 2019. The defendant admits that he operates the blog and is aware of the presence of and encourages members of the department to post information regarding their employment on the blog. Def.'s Ans., ¶¶ 3-4, 20. The defendant leaves the plaintiff to his proof or denies the remaining allegations. In particular, the defendant denies that defamatory comments were anonymously made regarding the plaintiff and that these comments violated any statutes or applicable codes. Def.'s Ans., ¶¶ 17-19. Finally, the defendant denies that he is in possession of the

[2] General Statutes § 53a-130 (a), titled "Criminal impersonation: Class A misdemeanor," provides in relevant part: "A person is guilty of criminal impersonation when such person: (1) Impersonates another and does an act in such assumed character with intent to obtain a benefit or to injure or defraud another . . . ."

information that the plaintiff requests or that this complaint is the sole remedy at law for the plaintiff. Def.'s Ans., ¶¶ 23-25.

The defendant raises two special defenses. First, the defendant alleges that he is entitled to protection from compelled disclosure of information under General Statutes § 52-146t because the blog falls under the scope of news media, he has operated the blog for over eight years, it is viewed daily by people, and it is cited as the source of information reported on other news media providers. The defendant also alleges that the plaintiff has brought his complaint under General Statutes § 52-156,[3] but it must conform with § 52-146t, and the plaintiff's complaint fails to allege the required elements to sustain such a cause of action. Second, the defendant alleges that the Communications Decency Act of 1996, 47 U.S.C. § 230 et seq. (2018) (CDA), protects the defendant, both for publishing his own personal opinions and as the publisher of anonymous opinions on the blog and, further, that the first amendment of the United States constitution protects anonymous speech and the defendant's right to voice his opinion.

The plaintiff filed a motion to strike the defendant's special defenses on January 30, 2020, accompanied by a memorandum of law in support, on the grounds that (1) the defendant, as the operator of a blog, is not entitled to protection under § 52-146t; and (2) that the defendant has not sufficiently alleged that he is entitled to protection under the CDA. The defendant filed a memorandum of law in opposition on July 16, 2020, and an

[3] The plaintiff filed his complaint for a pre-action bill of discovery petition pursuant to General Statutes § 52-156a. Pl.'s Compl., ¶ 1. The defendant in his first special defense states that the plaintiff is proceeding under § 52-156. Def.'s Ans., First Special Defense, ¶ 5. The defendant, however, admits in paragraph one of his answer that the plaintiff filed the complaint pursuant to § 52-156a. Def.'s Ans., ¶ 1. Section 52-156, titled "Preservation of the testimony of a witness," is applicable in seeking to obtain the testimony of a witness in a civil action which is or may be before the court. General Statutes § 52-156 (a). Section 52-156a, titled "Deposition to perpetuate testimony before action or pending appeal," is applicable in seeking to obtain information necessary in order to bring a civil action against another party. General Statutes § 52-156a (a).

amendment to the same on August 6, 2020. The matter was heard via a remote hearing on August 7, 2020.

DISCUSSION

"[A] party may challenge the legal sufficiency of an adverse party's claim by filing a motion to strike." *Vertex, Inc.* v. *Waterbury*, 278 Conn. 557, 564, 898 A.2d 178 (2006). "The purpose of a motion to strike is to contest . . . the legal sufficiency of the allegations of any complaint . . . to state a claim upon which relief can be granted." (Internal quotation marks omitted.) *Fort Trumbull Conservancy, LLC* v. *Alves*, 262 Conn. 480, 498, 815 A.2d 1188 (2003). "In addition to challenging the legal sufficiency of a complaint or counterclaim, our rules of practice provide that a party may challenge by way of a motion to strike the legal sufficiency of an answer, including any special defenses contained therein . . . ." (Internal quotation marks omitted.) *GMAC Mortgage, LLC* v. *Ford*, 144 Conn. App. 165, 179-80, 73 A.3d 742 (2013). "Generally speaking, facts must be pleaded as a special defense when they are consistent with the allegations of the complaint but demonstrate, nonetheless, that the plaintiff has no cause of action. . . . The fundamental purpose of a special defense, like other pleadings, is to apprise the court and opposing counsel of the issues to be tried, so that basic issues are not concealed until the trial is underway. . . . Whether facts must be specially pleaded [however] depends on the nature of those facts in relation to the contested issues." (Citations omitted; internal quotation marks omitted.) *Almada* v. *Wausau Business Ins. Co.*, 274 Conn. 449, 456, 876 A.2d 535 (2005). "In ruling on a motion to strike, the court must accept as true the facts alleged in the special defenses and construe them in the manner most

favorable to sustaining their legal sufficiency." (Internal quotation marks omitted.) *HSBC Bank USA, National Assn.* v. *Nathan*, 195 Conn. App. 179, 193, 224 A.3d 1173 (2020). "On the other hand, the total absence of any factual allegations specific to the dispute renders [the special defense] legally insufficient." (Internal quotation marks omitted.) *Smith* v. *Jackson*, Superior Court, judicial district of Waterbury, Docket No. CV-14-6024411-S (August 21, 2015, *Roraback, J.*) (60 Conn. L. Rptr. 864, 865).

This action is for a bill of discovery and was filed pursuant to General Statutes § 52-156a, which allows a person to file a petition in the Superior Court in order to perpetuate testimony of an adverse party if the petitioner expects to bring an action but is presently unable. General Statutes § 52-156a. In the present case, the plaintiff has filed for a pure bill of discovery[4] seeking from the defendant any identifying information about, including IP addresses of, the anonymous commenters on the blog. A brief discussion of a bill of discovery is appropriate before examining the sufficiency of the alleged special defenses. "The bill of discovery is an independent action in equity for discovery, and is designed to obtain evidence for use in an action other than the one in which discovery is sought." *Berger* v. *Cuomo*, 230 Conn. 1, 5-6, 644 A.2d 333, (1994). "The bill is well recognized and may be entertained notwithstanding the statutes and rules of court relative to discovery. . . .

[4] "To sustain a pure bill of discovery, a party must show that the matter he seeks to discover is material and necessary to the proof of, or is needed to aid in the proof of, another action, already brought or about to be brought, and that he has no other adequate means of enforcing discovery of the matter. . . . [E]arlier cases in this state, make a distinction between pure bills of discovery and bills for discovery and relief. In the latter, the petitioner must show that he has stated a valid cause of action for the equitable relief in support of which he seeks to invoke the equitable powers of the court for a discovery." (Citations omitted.) *Pottetti* v. *Clifford*, 146 Conn. 252, 258, 150 A.2d 207 (1959).

"When dealing with a pure bill of discovery, however, the court's only function is to pass upon the necessity of a party's informational request. . . . In a pure bill of discovery, the petitioner simply seeks to obtain evidence to be used in some suit other than that in which discovery is sought." (Citation omitted; internal quotation marks omitted.) *Renton* v. *Kone, Inc.*, Superior Court, judicial district of Hartford, Docket No. CV-14-6050141-S (September 26, 2014, *Wahla, J.*).

Furthermore, because a pure bill of discovery is favored in equity, it should be granted unless there is some well-founded objection against the exercise of the court's discretion." (Citation omitted.) Id., 6. "[T]he plaintiff who seeks discovery in equity must demonstrate more than a mere suspicion; he must also show that there is some describable sense of wrong. The plaintiff need not, however, state each claim with technical precision; he need only set forth facts that fairly indicate that he has some potential cause of action."[5] Id., 7-8.

I

First Special Defense: General Statutes § 52-146t

The defendant alleges in his first special defense that he is entitled to protection from compelled disclosure of information under § 52-146t because the blog falls under the scope of news media, he has operated the blog for over eight years, it is viewed daily by people, and it is cited as the source of information reported on other news media providers. The defendant further alleges that the plaintiff has not meet his burden of proof to compel

[5] See *Manzo-Ill* v. *Bank of N.Y. Mellon Corp.*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-16-6028365-S (January 12, 2017, *Povodator, J.*) (63 Conn. L. Rptr. 765, 769) (granting motion to strike bill of discovery relating to marriage dissolution where mere distrust of provided information was not sufficient to compel court to order bill of discovery to aid in verifying information); *Renton* v. *Kone, Inc.*, supra, Superior Court, Docket No. CV-14-6050141-S (denying motion to strike bill of discovery sounding in defamation and negligent infliction of emotional distress where petitioner had already discovered requested information or had ability to discover requested information); *Jackson* v. *Yale New Haven Hospital*, Superior Court, judicial district of New Haven, Docket No. CV-09-4038104-S (October 26, 2009, *Jones, J.*) (granting motion to strike bill of discovery where court found it did not meet *Berger* standard of demonstrating sufficient, detailed facts of probable cause for potential cause of action).

disclosure as § 52-146t has a higher burden of proof[6] than that of § 52-156a.[7] The plaintiff argues in his motion to strike that the defendant, as the operator of a blog, is not entitled to protection under § 52-146t as a blog does not fall within the definition of news media under the statute. The defendant counters that, even if all blogs are not entitled to protection under this statute, the defendant is so entitled.

General Statutes § 52-146t (a) (2) provides in relevant part: "'News media' means: (A) Any newspaper, magazine or other periodical, book publisher, news agency, wire service, radio or television station or network, cable or satellite or *other transmission system or carrier*, or channel or programming service for such station, network, system or carrier, or audio or audiovisual production company *that disseminates information to the public*, whether by print, broadcast, photographic, mechanical, *electronic or any other means or medium*; (B) Any person who is or has been an employee, agent or independent contractor of any entity specified in subparagraph (A) of this subdivision *and is or has been engaged*

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[6] General Statutes § 52-146t (d) provides: "If the news media and the party seeking to compel disclosure of information described in subsection (b) of this section or the identity of the source of any such information, or any information that would tend to identify the source of any such information, fail to reach a resolution, a court may compel disclosure of such information or the identity of the source of such information only if the court finds, after notice to and an opportunity to be heard by the news media, that the party seeking such information or the identity of the source of such information has established by *clear and convincing evidence*:

"(1) That (A) in a criminal investigation or prosecution, based on information obtained from other sources than the news media, there are reasonable grounds to believe that a crime has occurred, or (B) in a civil action or proceeding, based on information obtained from other sources than the news media, there *are reasonable grounds to sustain a cause of action*; and

"(2) That (A) *the information or the identity of the source of such information is critical or necessary* to the investigation or prosecution of a crime or to a defense thereto, or to the maintenance of a party's claim, defense or proof of an issue material thereto, (B) the information or the identity of the source of such information is not obtainable from any alternative source, and (C) *there is an overriding public interest in the disclosure*." (Emphasis added.)

[7] General Statutes § 52-156a (a) (3) provides in relevant part: "*If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice*, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the depositions shall be taken upon oral examination or written interrogatories. The depositions may then be taken in accordance with this section; and the court may make orders for the production of documents . . . ." (Emphasis added.)

in gathering, preparing or disseminating information to the public for such entity, or any other person supervising or assisting such person with gathering, preparing or disseminating information . . . ." (Emphasis added.)

In *State* v. *Buhl*, Superior Court, judicial district of Stamford-Norwalk, Docket No. S20N-CR-10127478-S (September 25, 2012, *Dennis, J.*), aff'd in part and rev'd in part, 152 Conn. App. 140, 100 A.3d 6 (2014), aff'd in part and rev'd in part, 321 Conn. 688, 138 A.3d 868 (2016),[8] relying upon the legislative history of the § 52-146t, the court, *Dennis, J.*, held that definition of "news media" in the subject statute specifically omitted internet blog sites. In *Buhl*, the defendant was a reporter who tried to invoke the protections of the statute as insulation for her own criminal acts. Id. The defendant anonymously created a Facebook profile under an alias and posted disparaging and damaging information about the victim and sent the victim's father copies of sensitive documents about his daughter. Id. The defendant was charged with, inter alia, harassment in the second degree and breach of peace. Id. The court focused, not only on her status as a reporter, but on the location of the

[8] The defendant, in his memorandum of law in opposition, asserts that *Buhl* is distinguishable because an evidentiary hearing and appeals to the appellate courts were necessary before the "shield law" could be "dismissed." Def.'s Mem. L. Oppn., pp. 6-7. On appeal in *Buhl*, however, the issues were limited and did not include a continued discussion over whether the defendant was entitled to the protections of the statute. *State* v. *Buhl*, 152 Conn. App. 140, 145-46, 100 A.3d 6 (2014), aff'd in part and rev'd in part, 321 Conn. 688, 138 A.3d 868 (2016). In the appeal, following the defendant's conviction of harassment in the second degree and breach of the peace in the second degree, the defendant claimed that there was insufficient evidence to sustain her conviction of either crime. Id., 141-42. The court affirmed in part and reversed in part the judgment of the trial court. Id., 161 (holding that there was insufficient evidence that Facebook page was public and remanded for judgment of acquittal on charge of breach of peace in second degree).

On appeal to the Supreme Court, there were two certified claims, one from the state and one from the defendant, each claiming the Appellate Court improperly determined the sufficiency of the evidence. *State* v. *Buhl*, 321 Conn. 688, 691, 138 A.3d 868 (2016). The Supreme Court affirmed in part and reversed in part the judgment of the Appellate Court, holding that it "(1) improperly determined that there was insufficient evidence to support the defendant's breach of the peace conviction; (2) properly concluded that there was sufficient evidence to support her harassment conviction; and (3) did not abuse its discretion in determining that her constitutional claims were inadequately briefed." Id., 703-704, 707-709, 729 (holding that determination of whether Facebook page was public was based on witness' credibility and reversed judgment, remanding with direction to affirm judgment of trial court on conviction of breach of peace in second degree).

harassment – an internet site. Id. Ultimately, the court reasoned that "[w]hile § 52-146t may afford the defendant certain testimonial privileges as to subpoenas if, indeed, she can show that she qualifies as a member of the 'news media' under the statute, it does not serve as a talisman to insulate her against arrest for her own alleged violations of the law. A review of the relevant legislative history yields nothing to suggest that the statute provides more than a qualified testimonial privilege." (Emphasis omitted; footnote omitted.) Id. The court, in a footnote, citing the legislative history held that "'[n]ews media' does not include internet blog sites." Id. The *Buhl* court's review, however, was narrower than the issue before this court and did not define a blog for the purpose of statutory interpretation. Moreover, unlike *Buhl*, the defendant is alleged in the complaint to be an operator of the blog, not a reporter.

To date, other than *Buhl*, no Connecticut court has directly addressed whether § 52-146t protects a blog or the operator of a blog from being compelled to disclose information and/or their sources. "The process of statutory interpretation involves the determination of the meaning of the statutory language as applied to the facts of the case, including the question of whether the language does so apply. . . . When construing a statute, [o]ur fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, we seek to determine, in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . In seeking to determine that meaning, General Statutes § 1-2z directs us first to consider the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Internal quotation marks omitted.) *Ugrin* v.

Cheshire, 307 Conn. 364, 379-80, 54 A.3d 532 (2012). "Only if we determine that the text of the statute is not plain and unambiguous may we look to extratextual evidence of its meaning, such as the legislative history and circumstances surrounding its enactment . . . the legislative policy it was designed to implement, and . . . its relationship to existing legislation and common law principles governing the same general subject matter . . . . The proper test to determine whether the meaning of the text of a statute is ambiguous is whether the statute, when read in context, is susceptible to more than one reasonable interpretation." (Internal quotation marks omitted.) *Eagen* v. *Commission on Human Rights & Opportunities*, 135 Conn. App. 563, 575, 42 A.3d 478 (2012).

By its terms, § 52-146t (b) protects the "news media" from compelled disclosure,[9] but the plain text of § 52-146t (a) (2) that defines news media does not specifically include blogs and does not address whether a "blog" falls within the definition of "other transmission system or carrier" or "electronic or any other means or medium." Therefore, since the definition of news media in the statute is ambiguous, the court will examine the applicable legislative history.

Number 06-140 of the 2006 Public Acts provides guidance regarding the legislature's intent when passing § 52-146t, the scope of the definition of news media, and, specifically, whether a "blog" falls within the definition of "news media." After reviewing the legislative history, it is clear that the intent of the legislature was to not include a blog

[9] General Statutes § 52-146t (b) provides: "*No judicial, executive or legislative body with the power to issue a subpoena or other compulsory process may compel the news media to testify concerning, or to produce or otherwise disclose, any information obtained or received, whether or not in confidence, by the news media in its capacity in gathering, receiving or processing information for potential communication to the public, or the identity of the source of any such information*, or any information that would tend to identify the source of any such information, unless such judicial, executive or legislative body complies with the provisions of subsections (c) to (e), inclusive, of this section." (Emphasis added.)

and/or blogger in the scope of the bill. See 49 S. Proc., Pt. 9, 2006 Sess., pp. 2918-19, 2923, 2925; 49 S. Proc., Pt. 11, 2006 Sess., p. 3282; 49 H.R. Proc., Pt. 6, 2006 Sess., pp. 1676-78, 1749-50, 1752-54; 49 H.R. Proc., Pt. 19, 2006 Sess., pp. 5839-40; Conn. Joint Standing Committee Hearings, Judiciary, Pt. 4, 2006 Sess., pp. 1214-15, 1228-30. In the House of Representatives debate on the definition of news media, Representative Hamzy stated: "I'm not sure [i]f a blogger . . . would fit in this definition [of the bill]. And one of the concerns that I have is that I'm not entirely sure that a blogger reports news. And that's one of the reasons why I voted against the Bill in Judiciary, is because any person can set up their own web log and, therefore, end up being afforded the same protections as a traditional person in the news media. And I'm not sure that the two are equal." 49 H.R. Proc., Pt. 6, 2006 Sess., pp. 1677-78, remarks of Representative William Hamzy. When the bill came before the Senate for debate, Senator McDonald remarked that "one of the most thorny issues we had to deal with in the Judiciary Committee on this subject was how to define a news media source and how to define a journalist. While we can probably all agree on most of those mediums, it has become quite difficult, in some circumstances, giv[en] the evolving technology that exists in our country and in the world with the Internet. . . . *[T]his amendment classifies types of media, but excludes from the definition of such media what we commonly have come to know as blog sites.* In part . . . because it's very difficult to determine whether a blog site is merely just a forum for posting individual opinions or if they are really a source of gathering and disseminating news." (Emphasis added.) 49 S. Proc., Pt. 9, 2006 Sess., pp. 2918-19, remarks of Senator Andrew McDonald. "[T]his amendment would create a shield for news media to prevent compulsion of disclosure of information received in a confidential setting by a subpoena, whether it is issued under judicial, executive, or legislative authority."

Id., p. 2920, remarks of Senator Andrew McDonald. Senator McDonald continued, stating that "the definition of news media includes a number of newspapers, magazines, periodicals, and other types of written publications, which are typically in hard copy, and does include radio and television stations. But the definition does not incorporate Internet blog sites or Internet websites in the definition." 49 S. Proc., Pt. 11, 2006 Sess., p. 3282, remarks of Senator Andrew McDonald.

Senator McDonald in his comments explained that it was difficult to distinguish whether a blog site was a forum for the posting of individual opinions, or if it actually served the purpose of gathering and disseminating news. In characterizing why a blog should not be included in the definition of news media, he explained that "if an individual was merely on a blog site and posting an item on that blog, claiming that the information recited in that posting was received from a confidential source, the origin, nature, and scope of the posting could not easily be ascertained and could not easily be confirmed whether it was from a traditional news gathering organization or from an amateur who might . . . just be posting it to express their own personal opinions." Id., p. 2923, remarks of Senator Andrew McDonald.

A review of the legislature's discussion shows that that this reasoning was the cause of the apprehension behind including a blog site in the definition of news media within the bill. "[T]he bill, by its plain language and by its legislative history, shows an intent to be concerned with news gathering and news dissemination . . . ." 49 H.R. Proc., Pt. 6, 2006 Sess., p. 1749, remarks of Representative James Spallone. Senator McDonald clarified that the bill did not "incorporate [i]nternet blog sites or [i]nternet websites"; 49 S. Proc., Pt. 11, 2006 Sess., p. 3282, remarks of Senator Andrew McDonald; and Representative Spallone commented that it was "not the intent [of the bill] to go beyond what are traditionally

reporters." 49 H.R. Proc., Pt. 19, 2006 Sess., p. 5855, remarks of Representative James Spallone. Clearly, it was the legislature's intent not to include a blog or a blogger in the scope of § 52-146t, largely on the basis of the fact that a blog is not a reliable media source and is personal in nature.

Furthermore, in interpreting a statute, the court can also consider the dictionary definition of a word. The dictionary defines a "blog" as a "site that contains online personal reflections, comments, and often hyperlinks, videos, and photographs provided by the writer." Merriam-Webster's Dictionary, available at https://www.merriam-webster.com/dictionary/blog (last visited September 21, 2020). The definition of blog supports the legislature's reasoning that it is a forum for personal opinions and information. The definition does not include any indication that a blog is a forum for news.

Although the legislature reflected the intent not to include a blog or a blogger in the definition of news media, there was discussion that there may arise an instance where a blog could be considered news media and provided some of the criteria that a blog would need to meet in order to qualify for protection. "Depending upon the nature of the blogger's activity as determined probably by a judge in court, a blogger may end up being swept in under the Bill, but also under circumstances, might not." 49 H.R. Proc., Pt. 6, 2006 Sess., p. 1676, remarks by Representative James Spallone. "[C]ourts . . . would go through an analysis of what that person has done historically, what type of information it gathered, what their purpose has been in gathering, have they disseminated information to the public. . . . [I]n going through the analysis, the court would be able to distinguish bloggers who act as journalists honestly and those who are simply posting personal information." Conn. Joint Standing Committee Hearings, Pt. 4, 2006 Sess., p. 1215. "Certain web bloggers would be

[qualified under the bill] if they're acting under a capacity of gathering, receiving, processing, and disseminating information to the public. Then the court probably would deem them, in this capacity, to be acting as journalists and covered under the protections of the shield law." Conn. Joint Standing Committee Hearings, supra, p. 1229.

In the present action, the defendant in his answer admits that he has been operating the blog, and in his first special defense, he alleges that he has operated the blog for over eight years, that the blog is viewed daily by people, and that it is often cited by other entities such as area television, radio, and newspapers. The defendant in his memorandum in opposition asserts for the first time that he has been publishing the blog for more than eleven years, the blog publishes his independent investigative reporting and permits the public to respond and supplement his journalism, the blog is published through an online service, many institutional media entities credit him in the stories they publish, and the blog "are serious providers of news and information." Def.'s Mem. L. Oppn., pp. 1-2. The defendant argues that § 52-146t provides protection to journalists and their sources, including the new journalistic "breed of 'bloggers.'" Def.'s Mem. L. Oppn., p. 2. The defendant concedes that the statutory protection is not specifically extended to "bloggers," but that the language of the statute encompasses those who disseminate information to the public by any means, electronic or otherwise. Def.'s Mem. L. Oppn., p. 5.

Even viewing the allegations in the defendant's first special defense in the light most favorable to the defendant, he has failed to plead sufficient facts that show his operation of the blog may satisfy the criteria of "news media" or that he is gathering, processing, and disseminating information to the public pursuant to § 52-146t. Although the defendant's memorandum of law in opposition, and the exhibits he attaches, provide facts that might

meet these requirements, the court is limited to the facts alleged in the pleadings. *Coe* v. *Board of Education*, 301 Conn. 112, 116-17, 19 A.3d 640 (2011); see *Mercer* v. *Cosley*, 110 Conn. App. 283, 292 n.7, 955 A.2d 550 (2008) ("A speaking motion to strike is one improperly importing facts from outside the pleadings. . . . [They] have long been forbidden by our practice . . . ." [Citations omitted.]); *Zirinsky* v. *Zirinsky*, 87 Conn. App. 257, 268-69 n.9, 865 A.2d 488, cert. denied, 273 Conn. 916, 871 A.2d 372 (2005) ("It is well established that a motion to strike must be considered within the confines of the pleadings and not external documents . . . . We are limited . . . to a consideration of the facts alleged in the complaint." [Internal quotation marks omitted.]). The language of § 52-146t (a) (2) in conjunction with the legislative intent to preclude a blog from the definition of news media and the facts that the defendant actually alleges serves to illustrate that the blog is more personal in nature than newsworthy.[10] Specifically, the blog allows for unedited comments from its subscribers. Def.'s Mem. L. Oppn., p. 1; see also Pl.'s Compl., ¶ 4; Def.'s Ans., ¶ 4.

Neither the defendant, nor his blog, qualify as "news media" under § 52-146t, both by the statutory language and the legislative intent, and are not shielded from compelled disclosure of the information that the plaintiff seeks.[11] Moreover, the facts alleged in the first

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[10] The defendant in his memorandum of law in opposition cites to *Citizens United* v. *Federal Election Commission*, 558 U.S. 310, 352, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010), for the proposition that the United States Supreme Court has included bloggers as journalists. This case is not applicable to the issues in the present action as *Citizens United* concerned first amendment rights and political speech. Id., 352-53. Any reference to blogs in *Citizens United* concern providing the public with information about political candidates and issues and potentially banning blogs that expressly advocate for the election or defeat of a candidate if that blog were created with corporate funds. Id., 364.

[11] Additionally, the defendant alleges that the plaintiff has not meet his burden of proof to compel disclosure as § 52-146t (d) has a higher burden of proof than that of § 52-156a. This court, having found that § 52-146t is not applicable, will not address this argument. See *Garfinkle* v. *Jewish Family Service of Greater New Haven, Inc.*, Superior Court, judicial district of New Haven, Docket No. CV-18-6087420-S (April 8, 2019, *Young, J.*) (explaining that "the merits are not under scrutiny at this juncture, only sufficiency of pleading. It

special defense fail to support any of the criteria outlined by the legislature that would allow this court to consider including the blog under "news media." Therefore, the court grants the motion to strike the first special defense.[12]

II

Second Special Defense: Communications Decency Act of 1996 and the First Amendment

The defendant alleges in his second special defense that the CDA protects the defendant, both for publishing his own personal opinions and as the publisher of anonymous opinions on the blog and, further, that the first amendment of the United States constitution protects anonymous speech and the defendant's right to voice his opinion. The defendant further alleges that it is unclear whether the plaintiff seeks action against the defendant for his own opinions or for publishing anonymous opinions, and that the first amendment of the United States constitution protects anonymous speech and the defendant's right to voice his own opinion. The plaintiff argues in his motion to strike that the defendant fails to plead sufficient facts to establish that he is entitled protection under the CDA or the first amendment of the United States constitution.

It is worth noting, at the outset, that there is no action or claim currently pending against the defendant as alleged in the bill of discovery or the prayer for relief sought. See Pl.'s Mem. L. Support Mot. Strike, pp. 12-14. The plaintiff's complaint is a pre-action bill

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is well established that a motion to strike must be considered within the confines of the pleadings and not external documents." [Internal quotation marks omitted.]).

[12] The defendant in his first special defense alleges that the plaintiff's allegations of violations of the Hartford Police Code of Conduct in the complaint are in conflict with the department's officers' first amendment rights. See Def.'s Ans., First Special Defense, ¶ 8. The defendant, however, provides no other factual support or any legal analysis to base these conclusions, other than to intersperse a reference to the first amendment, as it relates to defamation, into the defendant's argument regarding the burden of proof in his memorandum of law in opposition. See Def.'s Mem. L. Oppn., p. 6. As the defendant's second special defense is predicated on the CDA and first amendment privileges, the court will address the defendant's first amendment arguments more fully within the context of the of the second special defense.

of discovery petition, which seeks certain information from the defendant; specifically, any identifying information of the anonymous commenters on the blog and not the defendant's opinions.[13] Pl.'s Compl., ¶¶ 21-25. Therefore, to the extent that the defendant alleges that the first amendment of the United States constitution protects anonymous speech as well as the right of the defendant to voice his opinion, the plaintiff argues in his motion to strike, and the court agrees, that such a defense is inapplicable to this complaint as the defendant's own rights have not been adversely impacted by the plaintiff's request for the subscriber information. In the present case, neither the plaintiff nor the defendant allege that the defendant is one of the anonymous commenters on the blog, but, rather, that he is the publisher of the blog. Therefore, the defendant's own rights have not been adversely impacted by the plaintiff's request for the subscriber information, and the defendant does not challenge this argument in his memorandum of law in opposition. Moreover, this allegation is nothing more than a legal conclusion and, thus, insufficiently pleaded and unsupported by case law.[14] See *Faulkner* v. *United Technologies Corp.*, 240 Conn. 576, 588,

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[13] To the extent that the defendant alleges in his second special defense that the first amendment of the United States constitution protects rights of others, the plaintiff argues that the defendant lacks standing, and the defendant does not challenge that argument. "In order for a party to challenge the constitutionality of a statute or an action predicated thereon he must have standing. Standing focuses on whether that party is the proper party to request adjudication of the issues. . . . A person cannot challenge the constitutionality of a statute unless he shows that he himself is injured by its operation. . . . The emphasis is on whether the party has a personal stake in the outcome of the controversy . . . and whether the dispute touches upon the legal relations of parties having adverse legal interests. . . . The general rule is that a litigant may only assert his own constitutional rights or immunities. . . . If a party is found to lack standing, the court is without subject matter jurisdiction to determine the cause." (Citations omitted; internal quotation marks omitted.) *Harris* v. *Armstrong*, Superior Court, judicial district of Hartford, Docket No. CV-03-0825678-S (December 7, 2009, *Prescott, J.*); see *State* v. *Korhn*, 41 Conn. App. 874, 878, 678 A.2d 492, cert. denied, 239 Conn. 910, 682 A.2d 1010 (1996). The defendant lacks standing to assert this defense on behalf of the anonymous commenters because the defendant has no personal stake in any outcome of the bill of discovery as the defendant has not made any anonymous speech for which the plaintiff seeks discovery and, therefore, has no speech to protect. See Pl.'s Mem. L. Support Mot. Strike, p. 15. Also, the allegation that the plaintiff has stated it is his goal to "close down" the defendant's blog; Def.'s Ans., Second Special Defense, ¶ 3; refers to a statement made by the plaintiff, which cannot implicate the defendant's right to freedom of speech.

[14] Furthermore, the defendant's memorandum of law in opposition cites to the "New York Times Standard" for defamation claims and the "Gertz" standard for negligence claims; however, the issue before the court is the plaintiff's motion to strike the defendant's special defenses, not the merits of the complaint,

693 A.2d 293 (1997) ("[a] motion to strike admits all *facts* well pleaded; it does not admit *legal conclusions or the truth or accuracy of opinions* stated in the pleadings" [emphasis in original; internal quotation marks omitted]).

The court next turns to the defendant's claim that the CDA prohibits certain actions against publishers. Although the Connecticut courts have not addressed this matter frequently, the court in *Vazquez* v. *Buhl*, 150 Conn. App. 117, 123, 90 A.3d 331 (2014), analyzed the applicability of the CDA. "Congress enacted the CDA as Title V of the Telecommunications Act of 1996, Pub. L. No. 104-104, primarily to protect minors from exposure to obscene and indecent material on the Internet. . . . At the same time, however, Congress was also concerned with ensuring the continued development of the Internet. See 47 U.S.C. § 230 (b). Section 230 . . . was enacted based on a congressional concern that treating providers of computer services the same way as traditional publishers would impede the development of the Internet. Accordingly, Congress, [w]hether wisely or not . . . made the legislative judgment to effectively immunize providers of interactive computer services from civil liability in tort with respect to material disseminated by them but created by others." (Citation omitted; internal quotation marks omitted.) *Vazquez* v. *Buhl*, supra, 123.

The CDA provides in relevant part that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider"; 47 U.S.C. § 230 (c) (1); and "[n]o provider or user

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regardless of what the eventual actionable claim may be for in a subsequent action. See *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 94 S. Ct. 2997, 41 L.Ed.2d 789 (1974) (holding that private individuals have less access to channels of effective communication and are more vulnerable to injury than public officials and, therefore, do not have to meet New York Times standard of showing actual malice in defamation claim); *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 283-84, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964) (holding that in actions of defamation, constitutional level of protection is on basis of status of person defamed, such public official must prove that statements made were done so with actual malice); see also *Garfinkle* v. *Jewish Family Service of Greater New Haven, Inc.*, supra, Superior Court, Docket No. CV-18-6087420-S.

of an interactive computer service shall be held liable on account of—(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected . . . ." 47 U.S.C. § 230 (c) (2) (A). "To invoke the protection of the CDA, a defendant must show: (1) she is a provider or user of an interactive computer service; (2) the claim is based on information provided by another information content provider; and (3) the claim would treat the defendant as the publisher or speaker of that information." *Elliott* v. *Donegan*, United States District Court, Docket No. 18CV5680 (LDH) (E.D.N.Y. June 30, 2020). In order to establish this, it must be clear from the complaint that the allegations are against the defendant. See *Ricci* v. *Teamsters Union Local 456*, 781 F.3d 25, 28 (2d Cir. 2015) (holding that plaintiff's allegations against defendant were as publisher and, therefore, immune under CDA because "a plaintiff defamed on the internet can sue the original speaker, but typically cannot sue the messenger" [internal quotation marks omitted]).

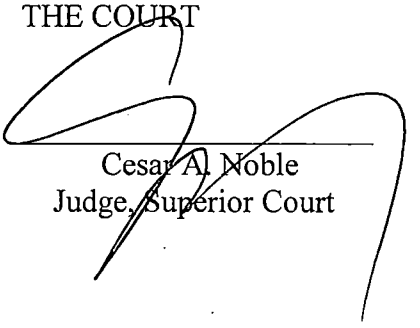
In the present action, the plaintiff moves to strike the second special defense because the defendant has not sufficiently alleged that he is entitled to protection under the CDA. The defendant pleads no factual support in his second special defense as to why the CDA shields him from disclosing the identifying information regarding commenters on the blog or how he is a publisher pursuant to the CDA, and his memorandum of law in opposition fails to address this issue at all. See Def.'s Ans., Second Special Defense, ¶ 1. Although the court will view the facts in the light most favorable to the nonmoving party, there are no allegations to view favorably, only legal conclusions. See *Faulkner* v. *United Technologies*

Corp., supra, 240 Conn. 588. The court therefore grants the plaintiff's motion to strike the defendant's second special defense.

CONCLUSION

For the foregoing reasons, the court grants the plaintiff's motion to strike both the defendant's first and second special defenses.

THE COURT



Cesar A. Noble
Judge, Superior Court

Checklist for Clerk

Docket Number: HHDCV19-6119733S

Case Name: Benvenuto v. Brookman

Memorandum of Decision dated: 11/13/2020

File Sealed: **Yes** **No** X

Memo Sealed: **Yes** **No** X

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HHD-CV19-6119733-S BENVENUTO, VINCENT G. v. BROOKMAN, KEVIN

Prefix: HD4 Case Type: M90 File Date: 11/08/2019 Return Date: 12/03/2019

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Information Updated as of: 11/13/2020

Case Information

Case Type: M90 - Misc - All other
Court Location: HARTFORD JD
List Type: No List Type
Trial List Claim:
Last Action Date: 11/06/2020 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party		No Fee Party	Category
P-01	VINCENT G. BENVENUTO		Plaintiff
	Attorney: FAZZANO TOMASIEWICZ LLC (414049) File Date: 11/08/2019 96 OAK STREET HARTFORD, CT 06106		
D-01	KEVIN BROOKMAN		Defendant
	Attorney: KILLIAN & DONOHUE LLC (102619) File Date: 12/02/2019 363 MAIN STREET HARTFORD, CT 061061885		

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